

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF UNIQUE  
BROADBAND SYSTEMS, INC.

**AFFIDAVIT OF ROBERT ULICKI  
(sworn 27 June 2012)**

**I, ROBERT ULICKI**, of the City of Toronto in the Province of Ontario **MAKE OATH  
AND SAY:**

1. I am a director of Unique Broadband Systems, Inc. ("**UBS**") and its wholly-owned subsidiary UBS Wireless Services Inc. ("**UBS Wireless**" and, together with UBS, the "**Applicants**"). I have personal knowledge of the matters herein deposed, save and except where I refer to matters based on information and belief, in which cases I identify the source(s) of that information and believe it to be true. I have also reviewed relevant records, press releases and public filings as necessary, and rely on the information contained in those records, press releases, etc. and believe that information to be true.
2. I am also the portfolio manager and owner of Clareste Wealth Management Inc. ("**CWM**"). CWM manages Clareste LP, which owns approximately 1 per cent of the shares of UBS. In addition to me, the board of directors of UBS and UBS Wireless consists of Henry Eaton and Grant McCutcheon, who were elected to the UBS board at the same time as I was elected. Mr. McCutcheon is also the CEO of UBS. Between them, Mr. Eaton and Mr. McCutcheon hold less than a 1 per cent interest in UBS.

## **I. Introduction and Summary**

3. This Affidavit is filed in support of a Motion brought by UBS seeking to stay or suspend the holding of the 2012 Annual General Meeting of UBS' Shareholders (the "**2012 AGM**") to permit the on-going process to determine two large disputed claims asserted against UBS to be completed, without interruption, in accordance with an on-going claims procedure that has been implemented by the Court. The claims of these creditors are material to the CCAA proceedings and the ability of the Applicants to develop a plan under the CCAA.
4. The 2012 AGM is currently scheduled for 11 July 2012.
5. As described further below, one of the two disputed claims against UBS is asserted by a company that is related to Alex Dolgonos – DOL Technologies Inc. ("**DOL**"). Mr. Dolgonos also controls the single largest shareholder of UBS – 2064818 Ontario Inc. ("**206 Ontario**" and, together with Mr. Dolgonos and DOL, "**Dolgonos**"). 206 Ontario seeks to have the UBS board replaced at the 2012 AGM because Mr. Dolgonos does not agree with the course of action taken by UBS and wishes to put in place a new board selected by him to alter UBS' path in the CCAA proceedings. Based on previous Affidavits filing in these proceedings, I believe that Mr. Dolgonos has, since the CCAA proceedings commenced, been acquiring shares of UBS in the market and would hold enough shares at this point to replace the board at the 2012 AGM, notwithstanding how the other shareholders of UBS might vote.
6. UBS is concerned that: (a) the CCAA proceedings and the determination of the disputed claims, including the claim being asserted by Dolgonos, not be delayed or disrupted; (b) the costs of the CCAA proceedings not be increased; and (c) shareholders have complete information with respect to UBS' financial situation and Dolgonos' disputed claim against UBS before they are called upon to make a decision to change the UBS board and move the company off its current course.

7. As set forth further below, Dolgonos has unsuccessfully attempted to change the UBS board three times in the previous 18 months, including by way of an unsuccessful Motion to remove the majority of the UBS board pursuant to s. 11.5 of the CCAA.

## II. Stakeholders on this Motion

8. The Applicants are incorporated pursuant to the *Business Corporation Act*, R.S.O. 1990, c. B.16 (“**OBCA**”) and its shares are listed. UBS is a holding company that owns all of the issued and outstanding shares of UBS Wireless. UBS’ only realizable assets are its 39 per cent indirect interest in LOOK Communications Inc. (“**LOOK**”). UBS’ involvement in LOOK is described further in my Affidavit sworn 7 February 2012.
9. Aside from the Applicants, the major stakeholders in the CCAA proceedings to date have been Mr. Dolgonos, 206 Ontario, DOL, Gerald McGoey and Jolian Investments Limited (“**Jolian**” and, together with Mr. McGoey, “**McGoey**”). As noted above, 206 Ontario and DOL are controlled by Mr. Dolgonos. 206 Ontario is the largest shareholder of UBS and DOL has one of the two largest disputed claims against UBS. DOL filed a proof of claim against UBS for an aggregate amount of more than \$8 million, which claim is disputed by UBS. Mr. Dolgonos has also asserted a claim against UBS seeking indemnification for professional fees, which claim is also disputed by UBS.
10. Jolian is a company controlled by Mr. McGoey, the former CEO of UBS. Jolian filed a proof of claim against UBS for in excess of \$10 million, which claim is disputed by UBS. Mr. McGoey has also asserted a claim against UBS seeking indemnification for professional fees, which claim is also disputed by UBS.
11. The claims asserted by DOL and Jolian against UBS are based on litigation commenced by DOL and Jolian against UBS asserting that termination payments were triggered as a result of the replacement of the UBS board pursuant to s. 122 of the OBCA at a special meeting of UBS shareholders in July of 2010.

12. The claims being asserted by DOL and Jolian alone exceed the realizable value of UBS' assets.
13. UBS has approximately 15,000 individual shareholders. The majority of these shareholders hold very few shares of UBS. There are, however, a few shareholders that hold larger blocks of shares. Dolgonos, through 206 Ontario, holds the largest block of UBS shares.

### III. UBS Board of Directors

14. Prior to 5 July 2010, the UBS board of directors consisted of Gerald McGoey, Louis Mitrovich and Douglas Reeson. Mr. McGoey held the position of Chairman and Chief Executive Officer of UBS. On 5 July 2010, a special meeting of shareholders of UBS (the "**Special Meeting**") that was requisitioned by a group of shareholders of UBS (the "**Shareholder Group**"), including Clareste LP was held. The purpose of the Special Meeting was to remove the directors of UBS pursuant to s. 122 (1) of the OBCA and appoint Mr. Eaton, Mr. McCutcheon and me in their place pursuant to s. 122(3) of the OBCA.
15. At the Special Meeting: (a) the shareholders of UBS voted to remove the sitting UBS board; and (b) Mr. McCutcheon, Mr. Eaton and I were elected as directors to act in their place. We were elected notwithstanding that 206 Ontario, which at the time held 20% of the voting shares of UBS, opposed the removal of Mr. McGoey, Mr. Mitrovich and Mr. Reeson and the election of Mr. Eaton, Mr. McCutcheon and me.
16. UBS held its annual general meeting on 25 February 2011. At that meeting, thirteen (13) shareholders controlling 29 per cent of the voting shares of UBS, including 206 Ontario, nominated an alternate slate of directors. UBS' shareholders did not elect the directors proposed by Dolgonos. Mr. Eaton, Mr. McCutcheon and I were, once again, elected directors of UBS.

17. At the Special Meeting, shareholders provided the current UBS directors with a mandate to:
  - (a) Review and, if warranted, challenge \$2.5 million in “restructuring awards” declared by UBS in favour of the members of the UBS board and Mr. Dolgonos;
  - (b) minimize UBS’ expenses through a review of management compensation and expense claims and, if warranted, seek to recover improper expenses paid to Dolgonos and McGoey;
  - (c) re-adjust the compensation paid to UBS’ directors going forward;
  - (d) review the agreements between UBS and each of DOL, Jolian and LOOK and take appropriate action;
  - (e) distribute UBS’ assets to shareholders.
18. This mandate is described in the Information Circular attached as **Exhibit “A”**.
19. The foregoing mandate was affirmed by UBS shareholders at the 2011 Annual General Meeting in February of 2011. At that meeting, the shareholders rejected the efforts by Dolgonos to replace the UBS board and re-elected Mr. McCutcheon, Mr. Eaton and me to the UBS board.
20. As described in the Management Discussion and Analysis, copies of which are attached as **Exhibit “B”**, UBS has been consistent that its strategy since July of 2010 has been to, *inter alia*:
  - (a) maximize the value of its investment in LOOK; and
  - (b) defend all claims brought against UBS by DOL and Jolian.

21. As set forth below, these CCAA proceedings were commenced as a result of the litigation referenced in paragraph 20(b) and the claims by DOL and Jolian will be determined in the Claims Procedure.

#### IV. CCAA Proceedings

22. On 5 July 2011, the Court made an Order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the “**CCAA**”) in respect of the Applicants. A true copy of the Initial Order is attached as **Exhibit “C”**. RSM Richter Inc, now Duff & Phelps Canada, Restructuring Inc. (the “**Monitor**”) was appointed by the Initial Order to act as monitor of the Applicants. The Stay Period, as defined in the Initial Order, has been extended a number of times and currently expires on 30 July 2012.
23. The CCAA proceedings were precipitated by Actions commenced against UBS by each of Jolian and DOL after the UBS board was replaced in July of 2010 over the objection of Mr. Dolgonos and Mr. McGoey. There were serious allegations with respect to the conduct of Dolgonos and McGoey at issue in those proceedings and those allegations will, as set forth below, be determined in the CCAA proceedings.
24. As described in my Affidavit sworn 4 July 2011:
4. *UBS and UBS Wireless are both insolvent and are seeking to commence proceedings under the CCAA to, inter alia:*
    - (a) *facilitate the determination and compromise or arrangement of creditor claims against UBS to permit the company to propose a plan to realize value from the company’s assets, including its shareholdings in LOOK Communications Inc. (“**LOOK**”), and its accumulated tax losses and public listing;*
    - (b) *avert an imminent liquidity crisis being caused by litigation-related expenses that will prevent UBS from: (i) continuing to carry on business for the benefit of its stakeholders; (ii) defending*

*certain proceedings brought against the company; and (iii) prosecuting claims commenced by UBS; and*

- (c) *provide a process to determine certain claims being asserted against UBS asserted by certain former directors and officers on their merits.*

- 5. *But for the commencement of proceeding under the CCAA, UBS will not be able to continue and will likely be forced into a liquidating proceeding. This will not be in the best interests of UBS's stakeholders.*

...

- 53. *The cost of the Litigation [with DOL and Jolian] is, as set forth below, causing a serious strain on UBS's cash flow. The costs of the Litigation are such that UBS believes that it will not be able to fund the Litigation through to a determination on the merits. If UBS is not able to continue to fund the defence of the Litigation (and the prosecution of the counterclaims), the matter will not be determined on its merits and this will result in prejudice to UBS's other stakeholders. The amount being claimed against UBS in the Litigation is more than the total value of UBS's assets and will "swamp" the claims of UBS's other creditors.*

...

- 80. *UBS ... believes that a CCAA claims process will facilitate the determination of the claims asserted against UBS in the Litigation [with DOL and Jolian] and the Oppression Action in a more cost-effective and expedient manner for the benefit of UBS's stakeholders.*

## V. CCAA Claims Procedure

- 25. There is an on-going process in place to determine the disputed claims being asserted against UBS by Dolgonos and McGoe. Dolgonos' and McGoe's claims are based on the pre-CCAA Actions commenced by Dolgonos and McGoe against UBS as described further in my Affidavit sworn 7 February 2012.
- 26. On 4 August 2011, the Court made an Order (the "**First Extension and Claims Order**"), *inter alia*, establishing a procedure (the "**Claims Procedure**") for the filing of claims

against UBS. Jolian, through counsel, provided input into the Claims Procedure contained in the First Extension and Claims Order and consented to the making of the First Extension and Claims Order. A copy of the First Extension and Claims Order is attached as **Exhibit “D”**.

27. In accordance with the First Extension and Claims Order:

- (a) Dolgonos and McGoey filed claims against UBS;
- (b) the claims filed by Dolgonos and McGoey against UBS were, based on the fact that they were disputed by UBS, disallowed by the Monitor;
- (c) Dolgonos and McGoey appealed the disallowance of their claims by the Monitor; and
- (d) the parties have agreed that Dolgonos’ and McGoey’s disputed claims against UBS should be determined by a Judge.

28. The disputed claims against UBS being asserted by Dolgonos and McGoey dwarf the claims of UBS’ other creditors and are for amounts greater than the realizable value of UBS’ assets. Dolgonos’ and McGoey’s claims total well over \$18 million and the determination of the validity of these claims is fundamental to the restructuring of UBS.

29. Pursuant to an Order dated 13 April 2012 (the “**Claims Procedure Timeline Order**”) the Court established a timeline for the initial stage of the process by which Dolgonos’ and McGoey’s disputed claims against UBS will be determined by a Judge. A true copy of the Claims Procedure Timeline Order and the related Endorsement of Mr. Justice Wilton Siegel dated 15 April 2012 are attached as **Exhibit “E”**. In the Endorsement, Mr. Justice Wilton-Siegel that Dolgonos’ and McGoey’s disputed claims should be determined in the Claims Procedure “as quickly and efficiently as possible”.

30. The Claims Procedure Timeline Order required that Dolgonos, McGoey and UBS exchange documents describing their claims and counterclaims, including the legal and



factual basis for the claims, and identify relevant documents. Dolgonos, McGoey and UBS have each delivered these documents. I believe that the issues with respect to the claims being asserted by Dolgonos and McGoey are summarized in the documents delivered by UBS in response to the claims made by Dolgonos and McGoey and true copies of those documents are attached as **Exhibit “F”**.

31. The Claims Procedure Timeline Order further contemplated that, once the parties exchanged documents describing their claims:
  - (a) DOL and Jolian could bring Motions to bring third party and cross-claims into the Claims Procedure; and
  - (b) DOL and Jolian would bring Motions seeking leave to enforce an Order made by Mr. Justice Marrocco prior to these CCAA proceedings being commenced requiring that UBS advance professional fees to DOL and Jolian (the “**Marrocco Order**”)<sup>1</sup>.
32. As contemplated by the Claims Procedure Timeline Order, on 13 June 2012, Mr. Justice Wilton Siegel heard the following Motions:
  - (a) Motions by DOL and Jolian seeking to add third party claims they wish to bring against the former directors and, in the case of Dolgonos, a former officer of UBS into the Claims Procedure;
  - (b) Motions by DOL and Jolian seeking to enforce the Marrocco Order; and
  - (c) Motions by the former directors of UBS seeking advances in respect of professional fees if DOL and Jolian were permitted to advance third party claims in the Claims Procedure<sup>2</sup> (together, the “**Interim Motions**”).

<sup>1</sup> The Motion to lift the stay imposed by the Initial Order was brought pursuant to an Order made by Justice Simmons of the Ontario Court of Appeal, a copy of which is attached as **Exhibit “G”**.

<sup>2</sup> A Motion by the former CFO of UBS seeking similar relief was adjourned to be dealt with at a later date.

33. Mr. Justice Wilton-Siegel has not yet released his decision on the Interim Motions. The outcome of the Interim Motions will determine the balance of the schedule for the Claims Procedure. Once Mr. Justice Wilton-Siegel releases his decision on the Interim Motions, UBS will apply to the Court to have a schedule put in place to have Dolgonos' and McGoey's claims determined on their merits.
34. I believe that Dolgonos has sought to delay the Claims Procedure for as long as possible in the hopes that the 2012 AGM will result in a change of the UBS board and a change in direction for UBS.

## **VI. Previous Attempts to Change UBS Board**

35. If the 2012 AGM is not stayed, Dolgonos will be able to proceed with his 4<sup>th</sup> direct attempt to change the UBS board in the past 18 months.

### **A. Oppression Action**

36. Pursuant to a Statement of Claim issued on 22 December 2010, 206 Ontario commenced an action against UBS, Mr. McCutcheon, Mr. Eaton and me (the "**Oppression Action**") seeking, *inter alia*, to remove us from the UBS board. The Initial Order did not, initially, stay proceedings against the directors in the Oppression Action and 206 Ontario indicated that it intended to pursue the Oppression Action notwithstanding the CCAA proceedings.
37. On 20 December 2011, UBS brought a motion (the "**Director Stay Motion**") seeking, *inter alia*, to have the stay imposed by the Initial Order expanded to include the Oppression Action against the directors. Dolgonos opposed the Director Stay Motion and indicated that he wished to proceed with the Oppression Action as against the directors outside of the CCAA proceedings. On 25 January 2012, the Court granted the Directors Stay Motion. A copy of the Endorsement is attached as **Exhibit "H"**.

**B. 2011 Annual General Meeting**

38. As noted above, Dolgonos unsuccessfully attempted to replace the UBS board at UBS' 2011 Annual General Meeting held in February of 2011.

**C. Director Removal Motion**

39. On 20 December 2011, 206 Ontario brought a motion (the "**Director Removal Motion**") in the CCAA proceedings seeking an Order pursuant to s. 11.5 of the CCAA removing and replacing two of the directors of UBS with partners in a law firm that acted as counsel to DOL.
40. The Director Removal was heard at the same time as the Director Stay Motion and on 25 January 2012, Mr. Justice Wilton-Siegel dismissed the Director Removal Motion.
41. The Director Removal Motion was specifically intended to replace the majority of the UBS board with a view to having a new group of directors review and re-visit the decisions of the current UBS board with respect to, *inter alia*, Dolgonos' disputed claims against UBS. When cross-examined in connection with the Director Removal Motion, one of the proposed directors put forward by Dolgonos indicated that it was his understanding that Mr. Dolgonos' objective in replacing directors was to re-consider the actions of the UBS board based on Mr. Dolgonos' concern with decisions taken by the UBS board:

*Q. And did [Mr. Dolgonos] ever explain to you any objectives he had in replacing the board with you and Mr. Pasternack?*

*A. I believe it was just to have a fresh set of eyes on the situation. That the existing board had taken the decisions that were now in dispute [by Mr. Dolgonos] and human nature is such that you tend to defend what you have done; whereas a fresh group of people might come and look at the situation and see something differently.*

## VII. Dolgonos Partial Bid

42. The prospect of a partial take-over bid by Mr. Dolgonos, and the impact a change in control of UBS would have on the interest of UBS' stakeholders, was an issue that was raised when UBS sought protection under the CCAA.

43. On 3 June 2011, UBS received a letter from Dolgonos' counsel, Wildeboer Dellelce LLP ("**Wildeboer**"), indicating that Mr. Dolgonos, or a corporation or corporations controlled by him, intended to make a partial take-over bid for the shares of UBS. In my affidavit sworn 4 July 2011 in support of the Application by the Applicants under the CCAA, I advised that:

*On 3 June 2011, UBS received a letter from Wildeboer Dellelce LLP indicating that Mr. Dolgonos, or a corporation or corporations controlled by him, intended to make a partial take-over bid for the shares of UBS. ...*

*If this partial take-over bid is made, it may result in a change of control of UBS. This could result in Mr. Dolgonos, or a company or companies controlled by him, determining whether UBS continues to defend the [DOL and Jolian Claims] and the Oppression Action.*

44. Subsequent to the CCAA proceedings commencing, Dolgonos took no steps to proceed with the partial take-over bid threatened on 3 June 2011 until 18 January 2012, when Wildeboer sent a letter, through counsel, to UBS advising that Mr. Dolgonos intended to bring a partial take-over bid on or after 27 January 2012.
45. On 1 February 2012, Mr. Dolgonos launched the Dolgonos Partial Bid by delivering the Bid Circular, a copy of which is attached as **Exhibit "I"**, and related documents to all of UBS's shareholders. 206 Ontario is offering to acquire up to 10 million UBS shares – this represents 10% of UBS's voting shares – for \$0.08 per share.

46. In the press release dated 1 February 2012 issued in connection with the Dolgonos Partial Bid, Mr. Dolgonos expresses his concern that UBS “is on the wrong course” and at page 24 of the Bid Circular delivered by Dolgonos, shareholders are told that the ultimate purpose of the Dolgonos Partial Bid is to replace the UBS board.
47. On 2 March 2012, UBS brought a Motion seeking to suspend the Dolgonos Partial Bid. Pursuant to an Endorsement dated 6 March 2012, a true copy of which is attached as **Exhibit “J”**, Mr. Justice Wilton-Siegel found that the Dolgonos Partial Bid was not stayed by the Initial Order and refused to suspend the Dolgonos Partial Bid on the basis, *inter alia*, that the prejudice to stakeholders identified by UBS – a change in the UBS board and a change in direction by UBS – could be addressed by the Court at a later date.
48. The Dolgonos Partial Bid was to close on 9 March 2012. Dolgonos has, however, extended twice already and the Dolgonos Partial Bid now expires on 17 August 2012. I do not believe that Dolgonos wishes to close the Dolgonos Partial Bid and spend up to \$800,000 – a significant premium – to acquire further shares of UBS until he has replaced the UBS board with his selected directors, if ever.

#### **VIII. Dolgonos March Requisition**

49. On 8 March 2012, 206 Ontario and another company controlled by Mr. Dolgonos, 6138241 Canada Inc. (“**613 Canada**”), delivered a Requisition requesting that UBS call a special meeting of shareholders for the purpose of removing and replacing the current UBS board with Kenneth D. Taylor, Azim S. Fancy, Daniel Marks and Victor Wells (the “**Dolgonos March Requisition**”). True copies of the Dolgonos March Requisition and the related Press Release are attached as **Exhibit “K”**.
50. In the Press Release in respect of the Dolgonos March Requisition, Dolgonos indicates that: (a) the election of the proposed slate of directors “would represent the Company’s foremost opportunity to preserve value in UBS and establish an organization that can

build on the Company's assets"; (b) the proposed directors "are highly qualified and motivated to see UBS emerge from the CCAA process with the court's approval and preserve and enhance the Company's value"; and (c) UBS' shareholders are being given two very different visions for the future of UBS.

51. I am concerned with Dolgonos' motivation in seeking to replace the entire UBS board in the middle of the CCAA proceedings and the Claims Procedure without any apparent thought being given to how the change in the board will impact the CCAA proceedings or the Claims Procedure. It is clear that Mr. Dolgonos intends to have influence over the UBS board going forward. In February of 2012 Mr. Dolgonos wrote to UBS' shareholders:

*As the founder of UBS, I am committed to the Company, but UBS is on the wrong course. It needs new leadership. ... I am committed to working with a new board so that UBS can look to the future with renewed optimism.*

52. In his 6 March 2012 Endorsement denying UBS' request that the Dolgonos Partial Bid be suspended, Mr. Justice Wilton Siegel found:

*....I think that a motion addressing the directors' response to a shareholder requisition is a more appropriate proceeding in which to address the impact of the proposed change in the board of directors. At that time, the actual proposal of Dolgonos will be available for consideration, including any features directed toward addressing the legitimate concern of the UBS Directors that his principal objective is to have a new board of directors re-examine the merits of defending the DOL action. In addition, the schedule for determination of the DOL action and the Jolian action, as well as the identities of the proposed directors, will be known.....With this information, the court can make a more informed, and possibly a more nuanced, determination regarding the merits of any request for a special meeting of shareholders as well as the timing of any such meeting. (emphasis added)*

53. In connection with the Dolgonos March Requisition, Dolgonos has not provided any information whatsoever to address what Mr. Justice Wilton-Siegel described as UBS' legitimate concerns with respect to changing the UBS board while the CCAA proceedings are pending and the Claims Procedure is on-going.
54. I note that in connection with the Dolgonos Partial Bid, UBS wrote to Mr. Dolgonos on 3 February 2012 to inquire as to how the issues later identified by Mr. Justice Wilton-Siegel would be addressed by Dolgonos. A copy of UBS's letter is attached as **Exhibit "L"**. Mr. Dolgonos has not provided a substantive response to this letter.
55. UBS is prepared to meet with Mr. Dolgonos at any time to discuss the course being taken by UBS, but Mr. Dolgonos has not approached UBS with any concerns or suggestions. In fact, Dolgonos has not, at any point, opposed the CCAA proceedings and Dolgonos, in fact, consented to the Claims Procedure.
56. I am not aware of Dolgonos raising any issues with the Monitor with respect to the course being taken by UBS in the CCAA proceedings or providing any suggestions as to how any issues he might have with the course being taken by UBS might be addressed while ensuring that Dolgonos' and McGoey's disputed claims are determined.

#### **IX. Scheduling of 2012 AGM and Special Meeting**

57. On 28 March 2012, UBS agreed to hold the special meeting requisitioned by Dolgonos on 11 July 2012, at the same time as the 2012 AGM. The letter to Dolgonos' counsel and a copy of the Press Release announcing the 2012 AGM are attached as **Exhibit "M"**.
58. As set forth in the 28 March 2012 letter to Dolgonos' counsel, my Affidavit sworn 3 April 2012 and UBS' letter to shareholders in connection with the 2012 AGM, UBS agreed to hold the 2012 AGM on 11 July 2012 on the assumption that Dolgonos' and McGoey's disputed claims against UBS could be determined by July of 2012 and that, if



the disputed claims were not determined, UBS might adjourn the 2012 AGM until the claims were determined in the Claims Procedure.

59. On 8 May 2012, Wildeboer complained to the Ontario Securities Commission and the TSX with respect to UBS' response to Dolgonos' meeting requisition. Copies of that correspondence, as well as UBS' response and a Press Release issued by UBS to address Dolgonos' issues, are attached as **Exhibit "N"**.
60. On 25 April 2012, Dolgonos scheduled a 0930 appointment before Mr. Justice Wilton-Siegel for the purpose of scheduling a Motion by Dolgonos to challenge UBS' response to the Dolgonos March Requisition and, in particular, the position taken by UBS that it might seek to delay the 2012 AGM – Dolgonos wanted a firm date established for the 2012 AGM. A true copy of the e-mail exchange with respect to that 0930 appointment is attached as **Exhibit "O"**. Dolgonos' proposed Motion was not scheduled.
61. Rather than unilaterally adjourning the 2012 AGM and risking (further) litigation with Dolgonos, UBS has elected to seek an Order from the Court staying or suspending the obligation to convene the 2012 AGM until such time as the Dolgonos and McGoeys disputed claims are determined.
62. I understand that the Monitor supports UBS' position that the 2012 AGM ought to be adjourned until such time as the Dolgonos' and McGoeys' disputed claims against UBS are determined in accordance with the Claims Procedure.
63. A transition to a new board at this stage in the CCAA proceedings, and the Claims Procedure, will cause disruption and will result in increased costs and delays.
64. I do not know what, if any, information or understanding the directors being proposed by Dolgonos have with respect to UBS, the CCAA proceedings or the claims being asserted by Dolgonos and McGoeys. None of the directors being proposed by Dolgonos have been in contact with UBS to obtain an understanding of the company, the CCAA proceedings or the Claims Procedure. I am concerned that the appointment of a completely new board



will result in delays and increased costs as the new directors familiarize themselves with the issues involved in the CCAA and the Claims Procedure. The current directors have a great deal of knowledge with respect to the matters in issue.

65. I am also concerned that the replacement of the board will result in a change in UBS' counsel resulting in increased costs as new counsel becomes familiar with the CCAA proceedings, the Claims Procedure and the extensive litigation related to these matters.
66. Finally, I am concerned that no information has been provided as to the fees that will be paid to the Dolgonos' slate of directors if they are elected or what measures will need to be put in place in order to protect Dolgonos' directors. As matters currently stand, Mr. McCutcheon, Mr. Eaton and I are paid directors' fees of \$20,000 each per year and we have not requested a charge against UBS's assets in the CCAA proceedings.
67. I believe that until the Dolgonos' and McGoey's disputed claims are determined, there will not be sufficient information on which shareholders can make an informed decision about the future course of UBS. To ask that shareholders make a decision with respect to UBS' future without knowing whether Dolgonos' or McGoey's disputed claims are valid is unreasonable, given the significant impact the validity of Dolgonos' and McGoey's disputed claims has on the value of UBS' shares and the financial position of the company. The dispute with respect to Dolgonos' and McGoey's disputed claims also give rise to serious issues with respect to Mr. Dolgonos' conduct that may have an impact on how shareholders vote. Only once Dolgonos' and McGoey's disputed claims are determined will the remainder of UBS shareholders be in a position to properly assess the request by Mr. Dolgonos that his proposed slate of directors lead the future course of UBS in place of the current board.
68. UBS' shareholders are being presented with two different visions for the company. I differ with Mr. Dolgonos, however, as to whether, if the 2012 AGM goes forward on 11 July 2012 and the board is replaced with Dolgonos' slate of directors, UBS' shareholder will have exercised a choice as between these two visions. Since February of 2011, Mr. Dolgonos has acquired additional shares of UBS and the results of the 2012 AGM will

likely not reflect a change in the views of shareholders, but a change in Mr. Dolgonos' shareholdings such that he can impose his will on the other UBS shareholders -- shareholders that have already rejected his vision for UBS twice before.

69. There is no prejudice to Dolgonos in waiting until the Claims Procedure is completed and Dolgonos' and McGoeys' disputed claims are determined on their merits as part of the on-going Claims Procedure.

#### **X. Position of Other UBS Shareholders**

70. In connection with the 2012 AGM, UBS delivered the Notice of Meeting and Management Information Circular, and the letter to UBS shareholders attached as **Exhibit "P"**. The letter advises shareholders that UBS might seek to adjourn the 2012 AGM.

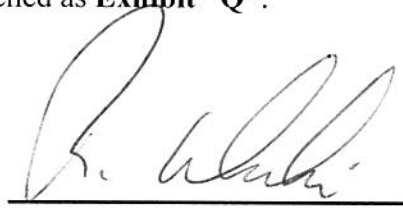
71. As previously noted, UBS has approximately 15,000 shareholders, most of whom hold a relatively small number of shares. There are, however, a few shareholders aside from 206 Ontario who hold larger blocks of shares. I have received correspondence from 11 UBS shareholders who, together with Clarex LP, hold a 19 per cent interest in UBS. These shareholders have advised me that they support the efforts of the current board and wish to ensure that they have more information on the validity and quantum of Dolgonos' and McGoeys' disputed claims before making a decision on a change in direction for UBS. Correspondence from those shareholders is attached as **Exhibit "Q"**.

**SWORN** before me at the City of Toronto  
in the Province of Ontario, this 27<sup>th</sup> day of  
June 2012

Commissioner for Taking Affidavits or Notary

*P. SHEA*

TOR\_LAW\7942197\1

  
**ROBERT ULICKI**